

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4144 of 1996

with

SPECIAL CIVIL APPLICATION NO. 8457 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

USHAKANT B PANDYA

Versus

GUJARAT STATE ROAD TRANSPORT CORPN.,

Appearance:

sca No. 4144 of 1996
MR DG CHAUHAN for Petitioner
MR YS LAKHANI for Respondent

SCA No. 8457 of 1996
Mr. Y.S.LAKHANI FOR PETITIONER
MR. D.G.CHAUHAN FOR THE RESPONDENT

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 05/11/96

Rule. In Special civil application No. 4144 of 1996, Mr. Lakhani waives service of Rule for the respondent; while Mr. Chauhan waives service of Rule for the respondent in Special civil application No. 8457 of 1996. With the consent of learned counsel for the parties, Rule is heard today.

Both these petitions arise out of one and common award. Therefore, they are being disposed of by this common judgment. Special civil application No. 4144 of 1996 is filed by the petitioner workman which is hereinafter referred to as the first petition and Special civil application No. 8457 of 1996 is filed by the petitioner-Corporation-employer, which is referred to as the second petition, for the sake of convenience.

The petitioner in the first petition was working as a bus conductor since 10.4.1987. The respondent-employer found that the petitioner workman was reissuing used tickets. On 24.12.1990, the workman was found reissuing used 9 tickets as a result of which, a charge sheet was filed against the petitioner for the alleged misconduct of reissuing 9 tickets.

In the departmental inquiry, delinquency of the workmen was held proved and the services of the petitioner came to be terminated. The impugned order recorded by the disciplinary authority was carried to the Labour court by making a Reference. The labour court partly allowed the Reference and reached the conclusion that the penalty of termination against the workman was not commensurate with his proved misconduct and found that the same was disproportionate to the gravity of delinquency. The labour court, therefore, quashed and set aside the impugned order of dismissal and directed the Corporation to reinstate the petitioner with continuity of service however, without back wages. The Labour court also directed withholding of two increments with permanent effect exercising discretionary powers under Section 11-A of the Industrial Disputes Act, 1947 ('ID Act'). The workman has, therefore, filed the first petition challenging withholding of back wages and stoppage of two increments with future effect; whereas, the respondent-Corporation has filed the second petition challenging the order of reinstatement.

After having carefully examined the facts and

circumstance emerging from the record of the present case and the impugned order and considering the limited jurisdictional parameter of writ court, this court finds that the impugned order is just and reasonable. Section 11-A of the ID Act empowers the Labour court or Tribunal, as the case may be, to grant appropriate relief in case of discharge or dismissal of a workman as and when the Labour court is satisfied that the order of disciplinary authority is not justified. The Labour court can exercise powers under Section 11A and grant appropriate relief in light of the facts and circumstances on record if the Labour court or Tribunal is satisfied that the order of discharge or dismissal is not justified on the touch-stone of unreasonable and disproportionate penalty imposed for the proved delinquency. The expression 'such terms and conditions, if any' gives clear indication of the powers of the Labour court or Tribunal. While directing reinstatement of the workman, the Labour court may impose any terms and conditions. Such terms and conditions may be one of withholding of back wages. Section 11-A also empowers the Labour court or the Tribunal to impose lesser punishment in lieu of discharge or dismissal which is left to the discretion of the Labour court or the Tribunal which, of course, has to be exercised judicially and judiciously.

There is no doubt about the fact that the charge proved against the workman was of misappropriation on account of reissuing tickets. If a conductor of the Corporation indulges in such misconduct of reissuing tickets, the same cannot be lightly viewed. It is a serious misconduct. However, taking into consideration the antecedents, past record, gravity of delinquency and other relevant facts and circumstances, The Labour court was satisfied that extreme penalty of dismissal was disproportionate and imposed a lesser punishment of withholding back wages and stoppage of two increments with future effect while ordering reinstatement of the workman. Exercise of discretion in light of the facts and circumstances emerging from the record of the present case cannot be said to be in any way arbitrary, unreasonable, perverse or illegal requiring interference of this court in the extra-ordinary, prerogative and equitable writ jurisdiction.

Reliance is placed on the Division Bench decision of this court in Gujarat State Road Transport Corporation vs. Danaji Sukaji, 1994 II LL.J. 1113. In that case, the workman/ conductor was dismissed following domestic inquiry on the ground of misappropriation. The Labour

court exercising powers under Section 11-A of the ID Act recorded an order of reinstatement of the workman but without back wages. The expression 'on such terms and conditions, if any, as it thinks fit' came to be interpreted and it was held that the Labour court is clothed with power, and direction not to pay back wages was on the terms and conditions on which the reinstatement was ordered.

The Labour court has jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. It was pointed out in the aforesaid decision that the Labour court has jurisdiction to give direction as regards reinstatement of workman without back wages and such direction not to pay back wages would be a term and or condition on which reinstatement is directed. The Division Bench also relied on the decision of the Supreme court in Baldev Singh vs. Presiding officer, Labour court, Patiala, 1986(4) SCC 519.

In Baldev Singh's case (supra), the driver was charged for causing damage to the Punjab Roadways to the extent of Rs. 22.50 by taking the bus of which he was the driver through some other route. In the departmental inquiry, he was held guilty of the charge and his services were ordered to be terminated. On reference, the Labour court was satisfied that the inquiry held against him was proper but the punishment recorded was harsh and not in consonance with the nature of charges levelled against him. Therefore, the Labour court directed that dismissal should be set aside and the workman should be reinstated with continuity of service but without back wages.

In Gujarat State Road Transport Corporation vs. Kantilal M. Parmar, 1991(1) GLH (U.J.) 7, the respondent-conductor who had not issued tickets to some passengers though fare was collected from them, was reinstated but without back wages and this court found that withholding of two increments with permanent effect will meet the ends of justice if this punishment is also imposed in addition to the punishment of withholding of backwages imposed by Labour court. No doubt, it is true that in that case, there were past defaults committed by the conductor, but the principle laid down therein is clear and attracted to the facts of the present case.

This court again in a Division Bench decision in Gujarat State Road Transport Corporation vs. Bhikhubhai N.Suru,1991(1)GLH (U.J.) 15, exercising powers under Section 11-A of the I.D.Act awarded the workman-conductor reinstatement without back wages and withholding of three increments with future effect who was found guilty of collector fare but not issuing tickets. The only difference in the present case is of reissuing of tickets and thereby misappropriating the amount as a result of re-issuance of tickets.

After having put all the facts and circumstances in the focus and considering the relevant proposition of law, the impugned award recorded by the Labour court exercising its discretionary power under Section 11-A is quite justified. The principles laid down in the aforesaid decisions are attracted to the facts of the present case, with the result, the petitions are required to be dismissed. Accordingly, they are dismissed. Rule discharged in each of them with no order as to costs.
